

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

THERESA LOMAS, individually and on behalf
of all others similarly situated,

CASE NO.: 6:22-cv-00679

Plaintiff,

v.

HEALTH INSURANCE ASSOCIATES LLC,

Defendants.

**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF’S COMPLAINT**

Defendant, Health Insurance Associates LLC (“Defendant”), responds to the Complaint [D.E. 1], filed by Plaintiff, Theresa Lomas (“Plaintiff”), as follows:

NATURE OF ACTION

1. Paragraph 1 of the Complaint contains legal conclusions that are not allegations capable of admission or denial. To the extent a response is required, Defendant denies such conclusions and demands strict proof thereof.
2. Defendant denies the allegations in paragraph 1 of the Complaint and demands strict proof thereof.
3. Defendant denies the allegations in paragraph 3 of the Complaint and demands strict proof thereof.

PARTIES

4. Defendant is without knowledge of the allegations contained in paragraph 3 of the Complaint, and therefore denies same and demands strict proof thereof.
5. Defendant admits it is a Florida limited liability company with its primary place

of business and headquarters in Port Orange, Florida.

JURISDICTION AND VENUE

6. Paragraph 6 of the Complaint contains legal conclusions that are not allegations capable of admission or denial. To the extent a response is required, Defendant admits that a federal question is involved in this matter that would confer subject matter jurisdiction over this matter.

7. Paragraph 7 of the Complaint contains legal conclusions that are not allegations capable of admission or denial. To the extent a response is required, Defendant admits that there is personal jurisdiction over Defendant in Florida.

8. Paragraph 8 of the Complaint contains legal conclusions that are not allegations capable of admission or denial. To the extent a response is required, Defendant does not dispute the issue of venue.

TCPA BACKGROUND

The TCPA Prohibits Automated Telemarketing Calls

9. Paragraph 9 of the Complaint contains legal conclusions and statements that are not allegations capable of admission or denial. To the extent a response is required, Defendant denies liability for same.

10. Paragraph 10 of the Complaint contains legal conclusions and statements that are not allegations capable of admission or denial. To the extent a response is required, Defendant denies liability for same.

11. Paragraph 11 of the Complaint contains legal conclusions and statements that are not allegations capable of admission or denial. To the extent a response is required, Defendant denies liability for same.

12. Paragraph 12 of the Complaint consists of legal conclusions and statements that are not allegations capable of admission or denial. To the extent a response is required, Defendant denies liability for same.

FACTUAL ALLEGATIONS

13. Paragraph 13 of the Complaint consists of legal conclusions and statements that are not allegations capable of admission or denial. To the extent a response is required, Defendant denies violating same.

14. Defendant is without knowledge of information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint, particularly where, as here, Plaintiff fails to allege her complete telephone number. Accordingly, Defendant denies the allegations and demands strict proof thereof.

15. Defendant denies the allegations contained in paragraph 15 of the Complaint and demands strict proof thereof.

16. Defendant denies the allegations contained in paragraph 16 of the Complaint and demands strict proof thereof.

17. Defendant denies the allegations contained in paragraph 17 of the Complaint.

18. Defendant denies the allegations contained in paragraph 18 of the Complaint and demands strict proof thereof.

19. Defendant denies the allegations contained in paragraph 19 of the Complaint and demands strict proof thereof.

20. Defendant denies the allegations contained in paragraph 20 of the Complaint and demands strict proof thereof.

21. Defendant denies the allegations contained in paragraph 21 of the Complaint and

demands strict proof thereof.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint. Accordingly, Defendant denies such allegations.

23. Defendant denies the allegations contained in paragraph 23 of the Complaint and demands strict proof thereof.

24. Defendant denies the allegations contained in paragraph 24 of the Complaint and demands strict proof thereof.

25. Defendant admits the allegations in paragraph 25 of the Complaint.

26. Defendant denies the allegations contained in paragraph 26 of the Complaint and demands strict proof thereof.

27. Defendant admits the allegations contained in paragraph 25 of the Complaint.

28. Defendant denies the allegations contained in paragraph 28 of the Complaint and demands strict proof thereof.

29. Defendant denies the allegations contained in paragraph 29 of the Complaint and demands strict proof thereof.

30. Defendant denies the allegations contained in paragraph 30 of the Complaint and demands strict proof thereof.

31. Defendant denies the allegations contained in paragraph 31 of the Complaint and demands strict proof thereof.

32. Defendant denies the allegations contained in paragraph 32 of the Complaint and demands strict proof thereof.

33. Defendant denies the allegations contained in paragraph 33 of the Complaint and

demands strict proof thereof.

34. Defendant denies the allegations contained in paragraph 34 of the Complaint and demands strict proof thereof.

35. Defendant denies the allegations contained in paragraph 35 of the Complaint and demands strict proof thereof.

36. Defendant denies the allegations contained in paragraph 36 of the Complaint and demands strict proof thereof.

37. Defendant denies the allegations contained in paragraph 37 of the Complaint and demands strict proof thereof.

38. Defendant denies the allegations contained in paragraph 38 of the Complaint and demands strict proof thereof.

39. Defendant denies the allegations contained in paragraph 39 of the Complaint and demands strict proof thereof.

40. Defendant denies the allegations contained in paragraph 40 of the Complaint and demands strict proof thereof.

41. Defendant denies the allegations contained in paragraph 41 of the Complaint and demands strict proof thereof.

42. Defendant denies the allegations contained in paragraph 42 of the Complaint and demands strict proof thereof.

43. Defendant denies the allegations contained in paragraph 43 of the Complaint and demands strict proof thereof.

FIRST CAUSE OF ACTION
Violation of the Telephone Consumer Protection Act
47 U.S.C. 227(b) on behalf of the Robocall Class

44. Defendant incorporates its responses to paragraphs 1 through 43 of the Complaint as if fully set forth herein.

45. Defendant denies the allegations contained in paragraph 45 of the Complaint and demands strict proof thereof.

46. Defendant denies the allegations contained in paragraph 46 of the Complaint and demands strict proof thereof.

47. Defendant denies the allegations contained in paragraph 47 of the Complaint and demands strict proof thereof.

48. Defendant denies the allegations contained in paragraph 48 of the Complaint and demands strict proof thereof.

PRAYER FOR RELIEF

In response to the WHEREFORE clause following paragraph 48 of the Complaint, including subsections (a) through (d), Defendant admits that Plaintiff seeks such relief but denies that Plaintiff is entitled to any relief whatsoever.

As to any part of the Complaint not specifically admitted, denied, or discussed with respect to Defendant, Defendant hereby denies said allegations and demands strict proof thereof.

JURY DEMAND

Defendant hereby demands a trial by jury on all issues so triable.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof where it otherwise rests with Plaintiff, Defendant pleads the following affirmative defenses to Plaintiff's Complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiff provided express consent prior to any alleged telephone call that is the subject of this lawsuit. Plaintiff knowingly released her phone number which in effect provides an invitation or permission to be called at the number which she gave. Plaintiff's claim under the TCPA fails accordingly.

SECOND AFFIRMATIVE DEFENSE

Plaintiff fails to state, and cannot state, a plausible cause of action for class relief pursuant to Federal Rule of Civil Procedure 23 in that, among other things, the claims Plaintiff seeks to assert cannot be common or typical of the claims of the putative class, nor is class relief superior to other available methods for fairly and efficiently adjudicating the claims Plaintiff attempts to assert since a class action would be inconsistent with the specific recovery provided by Congress.

THIRD AFFIRMATIVE DEFENSE

Plaintiff lacks standing to bring this action because neither Plaintiff nor the putative class members suffered the requisite harm required to confer standing under Article III of the United States Constitution.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff cannot state a claim against Defendant upon which relief can be granted (i) because Defendant did not and does not make telephone calls using an artificial or prerecorded voice to telephone numbers, (ii) if Plaintiff was not charged for the call, (iii) to the extent the

alleged calls may have been manually dialed, and (iv) where the alleged calls were solicited by Plaintiff.

WHEREFORE, Defendant, Health Insurance Associates LLC, respectfully requests this Court enter judgment as follows: (1) that Plaintiff takes nothing by virtue of the Complaint and that this Action be dismissed in its entirety; (2) that judgment be rendered in favor of HIA; (3) that attorneys' fees and costs incurred in this Action be awarded to HIA to the greatest extent permitted by applicable law; and (4) that HIA be awarded such further and other relief as this Court deems just and proper.

Dated: May 23, 2022.

Respectfully submitted,

By: /s/ Wendy Stein Fulton
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*Attorneys for Defendant, Health Insurance
Associates LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the **23rd** day of May, 2022, I electronically filed the foregoing Answer and Affirmative Defenses to Plaintiff's Complaint [D.E. 1] with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

By: /s/ Wendy Stein Fulton
WENDY STEIN FULTON